HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.NO. 13167 OF 2007

Dt. 5.10.2007

Between:

M/s. Oil & Natural Gas Corporation Ltd.
Rajahmundry

…Petitioner

and

The Commercial Tax Officer, Alcot Gardens,
Rajahmundry and others

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE S. ANANDA REDDY

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ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

This writ petition raises a very short question for determination. The petitioner is a public corporation engaged in exploration and exploitation of hydro carbons in the area of Krishna Godavari basin. The petitioner imported Truck Mounted Acid Pumping Unit from M/s. Hydraulic Power Technology, Texas, U.S.A. for a sum of Rs.2,23,52,625/-. The said vehicle reached the petitioner

through Chennai Port. It was cleared by Customs Authorities as no custom was levied. The petitioner approached the Regional Transport Officer, Kakinada for registration of the said vehicle under the Motor Vehicles Registration Act. The said authority directed the petitioner to obtain and file clearance certificate from 1st respondent for entry tax. Accordingly the petitioner approached the 1st respondent by its letter dt. 14.7.2003 and the 1st respondent computed the amount of entry tax payable by the petitioner at Rs.27,90,468/-. The amount was paid, according to the petitioner, under protest by a letter on 19.12.2003. Subsequently the petitioner started representing the 3rd respondent for refund of the amount as, according to him, the vehicle imported by them was not liable to tax. The Government issued a clarification on 25.5.2004 stating therein that, “there is no liability to pay Entry Tax in case the goods are imported from foreign country”. Thereupon the petitioner approached the 3rd respondent for refund of the entry tax collected from him, but the amount was not refunded. The petitioner filed a writ petition being WP No. 17958 of 2006 seeking refund of the amount together with interest. The Court disposed of the writ petition on 20.2.2007 on the basis of the representation made by the Government Pleader for Commercial Taxes that the 2nd respondent had passed an order on 9.2.2007 holding that the petitioner was

entitled for refund of Rs.27,90,468/-. There is no dispute that this amount was refunded and was received by the petitioner. However, the dispute is raised that the petitioner was entitled for interest for the amount retained by the Commercial Tax Department from the date of its deposit till the date of its actual refund. The petitioner made a representation on 15.3.2007 and claimed interest of Rs.21,00,875/-. A reminder was also given. A reply was given by the 2nd respondent that there was no provision in the A.P. Tax on Entry of Motor Vehicles into Local Areas Act, 1996 for payment of interest for delayed refunds. Therefore this writ petition has been filed.

The facts are not in dispute, but the respondents have asserted that since Entry Tax Act does not provide for any interest on refunds, therefore the petitioner was not entitled to any interest. Besides, the amount deposited by the petitioner was neither deposited as a result of any assessment nor was any demand made by the Commercial Tax Department. The amount was deposited by the petitioner voluntarily on his own. Therefore, even if the Interest Act, 1978 applied in such situations, but it would not apply to the present case as the amount had been deposited by the petitioner on his own volition.

In the light of these assertions, it is necessary to go through certain documents which are on record. The petitioner wrote a letter on 14.7.2003 to the Commercial Tax Officer which says,

> "ONGC has purchased a Acid Pumping from USDA. The invoice and other details are also enclosed for calculating the entry tax.
>
> Kindly intimate the amount of entry tax to be paid for taking further necessary action at our end."

On the same letter calculations have been made by the Commercial Tax Officer by applying rate of 12% to the consideration amount of the vehicle. This letter clearly shows that a request was made to the Commercial Tax Officer to intimate the calculated amount of entry tax on the vehicle purchased by the petitioner. Thereafter on 19.12.2003 an amount of Rs.27,90,468/- was deposited with the Commercial Tax Officer. Annexure-P2 to which reference is made in the writ petition is only a letter dt. 19.12.2003 to the Commercial Tax Officer in which it is stated,

> "I enclose herewith a crossed cheque/DD on the State Bank of India bearing No. 964638, dated 19/12 in as per details mentioned below……..Regarding entry tax for Acid Pumper Rs.2790468/-"

It is stated in the writ petition that this amount was paid under protest, but the letter does not show that at any time any protest was recorded and in fact there was no question of having protested because the Commercial Tax Department had not at all demanded the tax. In view of this correspondence between the parties, there is no

doubt that the amount deposited by the petitioner was deposited voluntarily. The interest was claimed only after earlier writ petition was decided. In this view of the matter, whether the petitioner would be entitled to any interest or not would have to be seen in the context of the law laid by various courts. In this case, reference can be made to a judgment of this Court reported in *Gulbanu Razack Vs. Assistant Commissioner of Income-Tax (Investigation)* [1] and judgment of the Supreme Court reported in *State of Punjab Vs. Atul Fasteners Ltd.* [2] which is directly on the point. The Supreme Court held that the interest is admissible in a tax enactment on the grounds "agreement" and "statutory provision", but interest cannot be granted on the basis of equity under a tax enactment.

Coming to the Interest Act, 1978 on which reliance has been placed by the petitioner, the learned counsel appearing for him has submitted that irrespective of the fact that whether the interest was payable under the Entry Tax Act, the interest is payable in view of Section 4 (2) (b) of the Interest Act, 1978. Section 4 starts with the words,

> "(1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law"

So clearly this case does not fall within section 4 (1) of the Act. But Section 4 (2) lays down that in cases falling under (a), (b), (c) and (d) the interest would be payable

and the learned counsel for the petitioner has drawn our attention to Section 4 (2) (b) which lays down,

> "where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action."

According to the learned counsel, the fiduciary relationship as has been defined in Blacks Law Dictionary would mean,

> "those informal relations which exist wherever one person trusts in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal."

It further defines,

> "Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other……..Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que* trust, landlord and tenant, etc."

In the light of the definitions of the fiduciary relationship it is clear that either the amount should have been paid in a trust or relationship should have been result of confidence by one side on the other or by domination or influence by one side on the other. In the present case we have seen that in order to get the registration of the vehicle immediately and, to avoid any confusion, the petitioner paid the entry tax voluntarily on his own, and at no point of time any fiduciary relationship as such was created between the petitioner and the respondents. The learned counsel for the petitioner has relied on a judgment of the Madras High Court in *Union of India Vs. Coromandal Prodorite Limited* [3]. This pertains to tax paid under Central Excise and Salt Act, 1944. This case was altogether in a different fact situation where the State had demanded the tax and recovered the tax which the Courts ultimately found was not legal. The facts as narrated in the judgment are that the respondent-company was engaged in marketing of a wide range of acid resisting cements. One of the products formulated by the respondent company was “furacin Syrup”. This was sought to be classified by the excise authorities as “artificial or synthetic resins” and tax was demanded. The classification was questioned by the company who ultimately succeeded. The defence in the case was that Central Excises and Salt Act, 1944 did not provide for

payment of interest on the amounts wrongfully withheld by the excise department. In this fact situation the High Court of Madras held,

> "There is no bar imposed upon the courts for granting to a citizen interest on the amounts which have been illegally and without any authority of law have been withheld from the citizen."

The learned counsel for the petitioner has also relied on a judgment of the Supreme Court reported in *Hukumchand Vs. Fulchand* [4]. This case related to a public trust and the Court found that the trustee had failed to invest money which he ought to have invested and therefore the interest was payable and the primary question before the court was whether the trustee was deterred or not. But in the present case there is no point of the department becoming a trustee as the amount was paid by the petitioner voluntarily.

The learned Government Pleader has also drawn our attention to the fact that the claim of interest was not even equitable because it was an after thought. When the earlier writ petition was filed, the interest was not at all claimed. The earlier writ petition was confined to the relief of refund of amount and the prayer in the writ petition was,

> "to issue a writ or order or direction particularly one in the nature of writ of mandamus directing the first and second respondengts to refund the amount of entry tax of

Rs.27,90,468/- together with interest pursuant to the clarification dated 25.05.2004 issued by the fourth respondent in CCT's Ref: No. A1 (3)/296/2004."

In this view of the matter, the writ petition is dismissed. No costs.

BNJ

Dt.5.10.2007

SARJ

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[1] 186 ITR 226
[2] (2007) 7 VST 278 (SC)
[3] 1991 (52) ELT 165 (Mad.)
[4] AIR 1965 SUPREME COURT 1692